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To: Microsoft ATR
Date: 1/24/02 10:32am
Subject: Microsoft Settlement

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To: Renata B. Hesse
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Under the Tunney Act, I wish to comment on the proposed Microsoft settlement.

I feel that the conditions of the United States v. Microsoft Settlement fails to properly reprimand Microsoft for it's anti-competitive behavior.

The conditions of the settlement do not call for an opening of the windows file formats. I consider this a critical omission.

The opening of the windows file formats must be combined with effective documentation of API's. Microsoft should be required to release information about Windows interfaces. The definitions of "Microsoft Middleware Product" and "API" is to narrow, and provides loopholes for Microsoft to avoid any meaningful enforcement.

Definition U should be amended to read:

U. "Windows Operating System Product" means any software or firmware code distributed commercially by Microsoft that is capable of executing any subset of the Win32 APIs, including without exclusion Windows 2000 Professional, Windows XP Home, Windows XP Professional, Windows XP Tablet PC Edition, Windows CE, PocketPC 2002, and successors to the foregoing, including the products currently code named "Longhorn" and "Blackcomb" and their successors, including upgrades, bug fixes, service packs, etc.

Section E should be amended to read

... Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the purpose of inter-operating with a Windows Operating System Product or with application software written for Windows, via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to inter-operate with a Windows Operating System Product. ...

III. A. 2. of the Proposed Final Judgment should be amended to read

2. shipping a Personal Computer that (a) includes both a Windows Operating System Product and a non-Microsoft Operating System, or (b) will boot with more than one Operating System, or (c) includes a non-Microsoft Operating System but no Windows Operating System Product; or ...

In 1996 Caldera v. Microsoft the judge in the case ruled that:

"Caldera has presented sufficient evidence that the incompatibilities alleged were part of an anticompetitive scheme by Microsoft."

The concern here is that, as competing operating systems emerge which are able to run Windows applications, Microsoft might try to sabotage Windows applications, middle-ware, and development tools so that they cannot run on non-Microsoft operating systems, just as they did earlier with Windows 3.1.

The actions of Microsoft's executives in court (they appeared to make misrepresentations under oath), combined with Microsoft's previous actions (1996 Caldera v. Microsoft), should effect the severity of Microsoft's punishments for it's behavior.

The current settlement provides to many loop-holes for Microsoft to wiggle through. A more restrictive settlement is necessary, but I feel proper restrictions will only come from a judgment. Anything that Microsoft *agrees to* is not severe enough.

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